THE HON'BLE SMT. JUSTICE T. MEENA KUMARI
and
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No. 15265 of 2006

O R D E R: (Per the Hon'ble Smt. Justice T. Meena Kumari)

This writ petition is filed seeking a writ of Certiorari calling for the records relating to and connected with the order dated 10.5.2006 in O.A. No. 7578 of 2005 on the file of A.P. Administrative Tribunal and to declare the same as illegal and arbitrary and to set aside the order dated 10.5.2006 in O.A. No. 7578 of 2005.

The respondents herein filed O.A. 7578 of 2005 before the Tribunal seeking to call for the records pertaining to recruitment of Deputy Surveyors – 2005 vide Notification No. L3/10132/2003 dated 8.11.2003 issued by the 1st petitioner herein and to set aside Instruction No. 3(a) of the instructions to the candidates as being bad in law and violative of Rule 5 of A.P. Survey and Land Records Subordinate Service Rules and consequently to allow them for written examination without insisting on Physical Endurance Test ('PET' for short) for selection of Deputy Surveyors. The Tribunal disposed of the said O.A. along with batch of O.As., holding that Instruction No.3A of the instructions is bad in law and contrary to Rule 5 of the A.P. Survey and Land Records Subordinate Service Rules and directing the petitioners herein to identify and take steps to notify

the posts of Deputy Surveyors in the Scheduled areas to be filled up exclusively by the local Scheduled Tribe candidates in accordance with G.O.Ms.No. 92, Social Welfare – V Department dated 21.4.1987 and to finalise the selections to the post of Deputy Surveyors for the non-scheduled areas exclusively on the basis of the written test conducted in pursuance to the Notification dated 8.11.2005. Aggrieved, the petitioners filed this writ petition.

Heard the learned counsel for the parties and perused the record.

It is contended by Sri J. Sudheer, learned Special Government Pleader representing the learned Advocate General for the petitioners that the Service Rules do not prescribe the process of selection and recruitment and when the applicants are more in number than the posts available, the recruiting authority have every right to select the best among available by introducing any process of selection. Therefore, the Government have introduced Physical Endurance Test (PET) and written test in order to select the best among the applicants keeping in view the nature of the post of Deputy Surveyor. It is further contended that the Physical Endurance Test is prescribed uniformly for all the candidates without any exception and the Government have the power to issue executive instructions in the absence of any rules and therefore the Tribunal erred in holding that the Government cannot issue executive instructions and that the

Tribunal erroneously allowed the case of the respondents without verifying the facts stating that Physical Endurance Test is contrary to Rule 5 of the A.P. Survey and Land Records Subordinate Service Rules and therefore the order passed by the tribunal in O.A. 7578 of 2005 is liable to be set aside.

On the other hand, it is contended by the learned counsel for the respondents that the Tribunal on a proper perspective of the matter rightly disposed of the O.A. filed by the respondents with directions to the Government and holding that Instruction No.3A of the instructions is bad in law and the Government have no power to issue executive instructions and therefore the order passed by the Tribunal may not be interfered with. It is further contended by the learned counsel for the respondents that Rule 5 does not prescribe any such procedure and therefore the Government cannot introduce the procedure which is not prescribed in the Rule. The learned counsel relied upon the judgments of the Supreme Court in Dr. Krushna Chandra Sahu and others v. State of Orissa and others[1] and Inder Prakash Gupta v. State of Jammu and Kashmir[2] in support of his contention.

It is to be seen from the material available on record that the Government have issued G.O.Ms.No. 324 dated 26.7.2005 prescribing that application fee of Rs.100/- for Physical Endurance Test and an examination fee of Rs. 300/- for the Written Examination

(Rs.100/- case of SC/ST candidates) shall be collected from the candidates who desire to appear for selection to the posts of Deputy Surveyors. The Government of Andhra Pradesh, while issuing instructions to the candidates, at Instruction No. 3A prescribed that the selection of candidates for appointment to the post will be made in two stages i.e. i) Physical Endurance Test and ii) Written Examination and the nature Physical Endurance Test (PET) is I) 100 metres run in 15 seconds, ii) 1.2 meters high jump, iii) 800 metres run in 170 seconds. The contention of the respondents is that Rule 5 of the A.P. Survey and Land Records Subordinate Service Rules does not prescribe for the same and therefore the action of the petitioners in prescribing such test is illegal and arbitrary. But, Rule 5 of the A.P. Survey and Land Records Subordinate Service Rules did not prescribe the process of selection and recruitment but it only prescribes the qualifications one should possess for the post of Deputy Surveyor. As the Deputy Surveyor post is a grass root level post in Survey and Land Records Department and in the absence of any rules prescribing the mode of recruitment, the Government have issued executive instructions prescribing PET and Written Examination. Though the instructions prescribe both Physical Endurance Test and the Written Examination, the respondents – applicants have challenged the Physical Endurance and have not chosen to challenge the written test though it is also not prescribed in the statutory rules. The Tribunal, having held that the

petitioners cannot issue executive instructions in the absence of any specific Rules, issued directions that the selection of Deputy Surveyors shall be on the basis of written test. The case of the petitioners is that the Government vide G.O.Ms.No. 324 dated 26.7.2005 permitted collection of fees etc. for PET and for written test which itself would show that Government was aware about such selection process and therefore the decision was in full knowledge of the Government. It is also the case of the petitioners that most of the applicants have appeared for Physical Endurance Test and only upon realising the fact that they have not qualified they approached the Tribunal challenging the said procedure.

In the absence of any statutory rules prescribing the process of selection and recruitment, it is within the domain of the Government to issue executive instructions. It is not that the said Physical Endurance Test is stipulated only to a particular set of candidates but the same is prescribed to all the candidates uniformly. Under the circumstances, the Government have issued the abovementioned executive instructions by invoking the powers under Article 162 of the Constitution of India and G.O.Ms.No. 324 has been issued by order and in the name of the Governor of Andhra Pradesh by the Principal Secretary to Government (SER.), laying down fee structure. It is a fact that Rule 5 prescribes the qualifications for the post of Deputy Surveyor and it is also a fact that nowhere it is

mentioned that the Written Test and Physical Endurance Test are prescribed for recruitment to the post of Deputy Surveyors and it is only that a notification has been issued basing on the instructions issued by the Government by G.O.Ms.No. 324 dated 26.7.2005 prescribing fee of Rs.100/- for Physical Endurance Test and Examination fee of Rs.300/- for the written examination. But, the material placed before this Court discloses that the Head of the Department i.e. the Commissioner of Survey and Settlement Records has proposed recruitment process to the Special Chief Secretary vide letter dated 11.3.2005, the resultant of which is the issuance of G.O.Ms.No. 324 which is more or less invoking the powers under Article 162 of the Constitution of India. It is also brought to the notice of this Court by the learned Special Government Pleader that 1064 candidates have applied for the said posts but only 600 persons including the respondents herein have approached the Tribunal. It is further pleaded by him that the observation of the Tribunal “nothing prevented the respondent-Government to issue executive instructions in tune with the Special Rules, prescribing the Physical Endurance Test, as prescribed in the Police Department. This has not been done” cannot be sustained for the reason that the Government have already issued executive instructions and G.O.Ms.No. 324 which have already been implemented and Rule 5 does not stipulate that the selections shall be made only basing on the qualifications without resorting to any

procedure. As already observed, Rule 5 only prescribes the qualifications a person shall possess for applying to the post of Deputy Surveyor. It does not mean that the Government have no authority to conduct test or examination in order to select the eligible candidates. From the material available on record, it cannot be said that issuance of executive instructions and G.O.Ms.No. 324 laying down the fee structure for Physical Endurance Test and Written Examination to the posts of Deputy Surveyors is contrary to Rule 5. The respondents have no right whatsoever to contend that the Government have no power to issue executive instructions controlling the procedure. It is a fact that no amendment has been brought to Rule 5, but, however, it is within the domain of the Government to issue executive instructions when the Rules are silent on a particular subject. In this case, the procedure of eligibility for recruitment to the posts of Deputy Surveyors has been prescribed by the Government by issuing the executive instructions and it cannot be said that it is violative of Rule 5, as Rule 5 prescribes only qualifications and it is not a case where the amendment has been brought to the qualifications itself. Rule 5 prescribes qualifications only and not the aptitude of the candidates. The Tribunal also observed that necessarily the Physical Fitness has to be taken into consideration before ordering appointment to the post of Deputy Surveyor. It is also to be noted that more number of candidates have accepted the said procedure and have paid the necessary fee and participated in the

said tests. Under the circumstances, the entire process cannot be set aside at the will of small number of candidates. It is also to be observed that the case law relied upon by the respondents has no relevancy to this case as the decisions relied upon by the respondents relate to the cases where the selection committee has prescribed the said procedure. Here, it is not the case where the selection committee has prescribed the procedure but the Government itself have prescribed the procedure and therefore it cannot be said that it is in violation of Rule 5 of A.P. Survey and Land Records Subordinate Service Rules.

Under the above circumstances, the order dated 10.5.2006 passed by the Tribunal in O.A. No. 7578 of 2005 is liable to be set aside. It is accordingly set aside.

In the result, the writ petition is allowed.

T. MEENA KUMARI, J.

G.

CHANDRAIAH, J.

Date: 25-06-2007.

MVB.

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[1] (1995) 6 SCC 1

[2] 2004 AIR (SC) 2523